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8 Attorneys for Secured Creditor U.S. BANK, NA AS
9 LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6
10 TITLE TRUST

11 UNITED STATES BANKRUPTCY COURT

12 NORTHERN DISTRICT OF CALIFORNIA (OAKLAND)

13 In Re:	)	CASE NO.: 20-41288-WJL 13
)	
14 CAROL LEE DE PUYDT-MEIER,	)	CHAPTER 13
)	
15 Debtor.	)	DCN: CDM
)	
	)	OBJECTION TO MOTION TO
	)	VALUE LIEN AND COLLATERAL
	)	OF U.S. BANK, NA AS LEGAL
	)	TITLE TRUSTEE FOR TRUMAN
	)	2016 SC6 TITLE TRUST
	)	(ERRONEOUSLY REFERRED TO
	)	AS DOWNEY SAVINGS & LOAN) ;
	)	AND REQUEST FOR HEARING
)	
)	

21
22 TO THE HONORABLE WILLIAM J. LAFFERTY, DEBTOR, AND THE CHAPTER 13
23 TRUSTEE

24 COMES NOW, U.S. BANK, NATIONAL ASSOCIATION AS LEGAL TITLE
25 TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST ("Creditor"), a secured creditor holding
26 the senior lien encumbering Debtor's principal residence located at 61 Rudgear Drive, Walnut
27 Creek, CA (the "Property") (erroneously referred to as Downey Savings and Loan ("DSL")) and
28 files the within Objection to Debtor's Motion to Value Lien and Collateral which lien is

1 **OBJECTION TO MOTION TO VALUE LIEN AND COLLATERAL OF U.S. BANK, NA AS LEGAL TITLE**
2 **TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST (ERRONEOUSLY REFERRED TO AS DOWNEY SAVINGS &**
3 **LOAN); AND REQUEST FOR HEARING**

1 currently held by Creditor. First, it has been the Debtor's practice in this Motion, as well as in
2 her other pleadings filed in this case, to identify the holder of the senior lien on the Property (her
3 residence) as DSL, as DSL was the original lienholder, despite Debtor's numerous activities,
4 including litigation, where she knows that Creditor is the current lien holder. It is unclear to this
5 Creditor as to why she continues to do this. Debtor's Motion should be dismissed in its entirety
6 as to Creditor for her failure to name the proper current senior lienholder. Should the Court
7 decide to proceed with Debtor's Motion as against this Creditor, Creditor objects to the valuation
8 of the Property and Debtor's Motion to Value Creditor's Lien, as set forth below.
9

10 **I. STATEMENT OF FACTS**

11
12 1. Creditor is the holder of the senior Note and Deed of Trust encumbering the Property.
13 The Property is the Debtor's principal residence.

14 2. This is the Debtor's fourth (4th) Bankruptcy case.

15 3. The last case, a Chapter 11, was dismissed.

16
17 4. Debtor has instituted litigation against Creditor regarding the Property, which
18 litigation was adjudicated in favor of Creditor. Debtor appealed and currently has two (2)
19 Appeals pending. Debtor has appealed the Court's granting of Creditor's Motion for Summary
20 Judgment and, in a 2nd appeal, appealed the award of attorney's fees to Creditor. The two (2)
21 Appeals have been consolidated into one.
22

23 5. Debtor's pre-petition arrears total no less than \$402,065.78, representing over
24 10 ½ years of missed mortgage payments. The total monies due and owing Creditor under its
25 loan documents are no less than \$924,688.73.

26 6. Creditor has filed a timely objection to Debtor's proposed Plan.

27
28 7. Debtor's Motion proposes to value Creditor's collateral at \$362,000 and to modify
(limit) Creditor's claim to that amount and bifurcate Creditor's secured claim.

1 8. Debtor's Motion is in violation of *11 U.S.C. Section 1322(b)(2)* and must be
2 denied.

3 9. There is no legitimate purpose under the Bankruptcy Code to value Creditor's
4 claim, as is required under *11 U.S.C. Section 506(a)*.

5 10. In addition, Creditor believes the value of the Property is far greater than
6 \$362,000. Creditor is informed that Debtor has previously received an offer for the Property of
7 approximately \$750,000, which is substantially higher than Debtor's proposed \$362,000 value.
8 Creditor does not believe that the \$750,000 offer was an arm's length transaction.

9 11. Debtor opines that the value of the Property is a mere \$362,000 but provides no
10 credible evidence of how she arrived at this value. She alleges that the property has deferred
11 maintenance problems. If there are deferred maintenance issues, this clearly falls on the Debtor
12 to repair, as she has been the owner of the Property since at least the time the loan was made to
13 her, and she has allowed these purported deferred maintenance issues to occur and/or exist.

14 12. Based upon a broker's price opinion received by the Creditor, Creditor believes that
15 the value of the Property exceeds the amount of its claim and is no less than \$970,000 but is
16 probably greater than that amount now.

17 13. Should the Court (i) find a viable Bankruptcy purpose for allowing a valuation of
18 the Property; and (ii) legal grounds under the Bankruptcy Code allowing a modification of
19 Creditor's secured claim, and (iii) allows Debtor's Motion to proceed against Creditor, Creditor
20 requests that the Court order the Debtor to allow Creditor access to inspect the interior and
21 exterior of the Property and allow the Creditor the time to ascertain the current market value of
22 the Property by procuring an appraisal report..

1 14. Debtor has failed to notice or name the proper creditor, and her Motion has no
2 viable or legitimate purpose under the Bankruptcy Code as the Debtor cannot bifurcate
3 Creditor's lien as proposed and the Motion must be denied with prejudice as to Creditor.
4

5 **II. OBJECTION**

6 **A. DEBTOR'S MOTION VIOLATES 11 U.S.C. SECTION 1322(b)(2) AND** 7 **CANNOT BE GRANTED**

8 *11 U.S.C. Section 1322(b)(2)* provides that a Plan cannot:

9 (2) modify the rights of holders of secured claims, other than a claim secured only by a
10 security interest in real property that is the debtor's principal residence, or of holders of
11 unsecured claims, or leave unaffected the rights of holders of any class of claims;

12 Creditor's lien is secured solely by the real property which is Debtor's principal residence.
13 Therefore, the Debtor cannot modify Creditor's claim based upon the value of the Property.
14 Therefore, Debtor's Motion must be denied as it seeks any valuation, claim modification, lien
15 valuation, or relief against this Creditor.
16

17 **B. DEBTOR RELIES SOLELY ON 11 U.S.C. SECTION 506(a) TO VALUE** 18 **CREDITOR'S SECURED CLAIM**

19 Although *Section 506(a)* gives a debtor the right to value property of the estate, it provides
20 that an allowed claim of a creditor secured by a lien on Property in which the Estate has an
21 interest, and that such value shall be determined in light of the purpose of the valuation and of
22 the proposed disposition or use of such property, and in conjunction with any hearing on such
23 disposition or use or upon a plan affecting such creditor's interest. (*See, In re LTV Steel Co.*, 285
24 BR 259 (Bankr. N.D. Ohio 2002); *In re Miller*, 4 BR 392, 6 Bankr. Ct. Dec. (CRR) 410, 2
25 *Collier Bankr.Cas.2d* (MB) 212 (Bankr. S.D. Cal. 1980); *In re Todd*, 194 BR 893 (Bankr. D.
26 Mont. 1996)).
27

28 Debtor cites no valid or legitimate purpose under the Bankruptcy Code for the valuation of

1 Creditor's collateral and/or Creditor's lien, other than her attempt to impermissibly modify
2 (bifurcate) Creditor's secured claim. There is no valid Bankruptcy purpose for the proposed
3 valuation as to Creditor's claim, so Debtor's Motion must be denied as to Creditor in its entirety.
4

5 **C. DEBTOR'S OPINION OF VALUE**

6 Creditor does not dispute that an owner of real property can opine as to the value of their own
7 property. However, the Debtor establishes a value of \$362,000 which is far less than the value of
8 the Property, based on Creditor's analysis. Debtor cites no basis for this self-serving value, other
9 than to state that there is deferred maintenance issues, of which the Debtor caused or allowed to
10 exist. She cites no comparable sales, no specifics with regard to how she arrived at this value,
11 gives no estimates of value of the alleged deferred maintenance. Debtor's value is not credible
12 and should not be considered without further documented credible evidence.
13

14 **D. CREDITOR REQUIRES ADDITIONAL TIME WITHIN WHICH TO**
15 **OBTAIN AN APPRAISAL**

16 Without waiving the above objections, and if there is a legitimate Bankruptcy purpose for
17 evaluating the Property as it relates to Creditor's claim, and Creditor's claim, before proceeding
18 with any such valuation hearing Creditor needs the opportunity to obtain an appraisal of the
19 Property.
20

21 **WHEREFORE**, based on the foregoing, Debtor's Motion to Value the Collateral and
22 Creditor's Claim must be denied its entirety as to Creditor and requests as follows:

- 23 1. The Debtor's Motion be denied in its entirety;
- 24 2. A hearing be set on Debtor's Motion if the Court deems there is a viable
25 Bankruptcy purpose and the Bankruptcy Code would allow bifurcation of Creditor's claim;
- 26 3. The Court direct Debtor to allow Creditor to conduct an interior and exterior
27 appraisal of the Property;
28

1 4. For attorney's fees and costs incurred herein; and

2 5. For such other and further relief as the Court may deem just and proper.

3 Respectfully submitted,

4
5 Dated: 9/21/2020

LAW OFFICES OF DIANE WEIFENBACH

6 By: /s/ Diane Weifenbach
7 DIANE V. WEIFENBACH, Attorneys for
8 Secured Creditor U.S. BANK, NA AS LEGAL
9 TITLE TRUSTEE FOR TRUMAN 2016 SC6
10 TITLE TRUST
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

5120 E. La Palma Ave. #209, Anaheim, CA 92807

A true and correct copy of the foregoing documents entitled (*specify*) OBJECTION TO MOTION TO VALUE LIEN AND COLLATERAL OF U.S. BANK, NA AS LEGAL TITLE TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST (ERRONEOUSLY REFERRED TO AS DOWNEY SAVINGS & LOAN); AND REQUEST FOR HEARING will be served or was in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): On (date) 09/21/2020, I checked the CM/ECF docket for this bankruptcy case and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Debtor's Attorney: PRO SE
Chapter 13 Trustee: Martha G. Bronitsky - 13trustee@oak13.com
US. Trustee: ustpregion15.OAK.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL:

On (date) 09/21/2020, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows

Debtor:
Carol Lee DePuydt-Meier
61 Rudgear Drive
Walnut Creek, CA 94596

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

09/21/2020
Date

Hope Upham
Printed Name

/s/ Hope Upham
Signature